



H-8171 to HF 2433 – Licensing Discipline and Agency Procedure (LSB 5031HV.1)
Analyst: Aaron Todd (Phone: 515-281-6764) (aaron.todd@legis.state.ia.us)
Fiscal Note Version – New

Description

Amendment **H-8171** makes the following changes to **HF 2433**:

- Provides additional opportunities for public input to the administrative rulemaking process, including ensuring that public comments can be submitted electronically, providing to the extent practicable usage of the Iowa Communications Network (ICN) at multiple sites to collect public input orally, and to provide local input opportunities if 25 or more persons from the same city or county request it.
- Directs agencies to refer to the specific Iowa Code section(s) being implemented and a concise statement of the principal reasons for and against proposed and adopted rules in the preamble to proposed and adopted rules.
- Requires agencies, subject to the direction of the administrative rules coordinator, to make available to the public a uniform, searchable, and user-friendly rules database on an internet site, articulates the items that must be included on the rules internet site, and directs the administrative rules coordinator to create a uniform format for the rules internet sites.
- Directs that unless specified otherwise in Iowa Code, the implementation of rulemaking authority is to be construed narrowly.
- Restricts state agencies from enacting administrative rules or policies that exceed the federal statutes, regulations, or policies that they implement, except as specifically allowed by state law. Any portion of existing rules or policies that exceed specific federal requirements is automatically superseded by the federal requirements.
- Applies similar language found in **HF 2433** concerning deferred judgments to the Racing and Gaming Commission.
- Directs the Legislative Council, in consultation with the Department of Natural Resources (DNR), to establish a study to analyze the projected financial effects of current and proposed United States Environmental Protection Agency (EPA) regulations and DNR rules on Iowa cities over a ten-year period, and to issue a report to the Governor and General Assembly by June 30, 2013.

Fiscal Impact

- Agencies typically allow the submission of comments concerning administrative rules via electronic means or could adjust their processes to do so at minimal cost. Some agencies currently hold public input meetings in locations across the state, particularly when an issue may be deemed controversial. Under **H-8171**, it is assumed agencies would hold public hearings using the ICN when practicable, and it is anticipated that there will only be a few times each year that a group of 25 persons or more from one city or county will request that a hearing be held locally, thus producing minimal fiscal impact.
- Referring to specific Iowa Code sections and including reasons for and against proposed and adopted rules will produce no fiscal impact.

- Most agencies currently have sections of their website dedicated to the administrative rules process. Agencies may need to update, improve, or consolidate sections of their websites to comply with this amendment.
- Narrow construction of administrative rules is expected to produce minimal fiscal impact.
- Adding deferred judgment language to licensure actions of the Racing and Gaming Commission is expected to have minimal fiscal impact.
- The fiscal impact to conduct the study of EPA and DNR regulations is unknown but expected to have minimal fiscal impact.
- It is difficult for agencies to determine the exact number of rules and policies impacted by the proposed restriction from implementing rules that exceed the federal rules, regulations, and policies they implement. However, information provided by agencies allows for the identification of categories of potential fiscal impact. These categories include but may not be limited to:

Administrative Rulemaking Process

The Administrative Rules Review Committee (ARRC) may need to take action to determine a uniform process for agencies to follow when reviewing existing and proposed rules for compliance with minimum federal requirements, especially when the federal requirements are broad, permissive, or otherwise vague. While [H-8171](#) states that existing rules that exceed federal requirements are automatically superseded by the federal requirements, a formal review of existing agency rules for this potential conflict will ensure that rules are being consistently applied to all impacted entities.

Changes to Existing Benefits, Funding Distribution Formulas, and Fines/Penalties

Some agencies implement federal programs that allow broad agency discretion or optional methods of implementation. Under [H-8171](#), these instances would require the General Assembly to determine the course of action. For programs such as Medicaid, the General Assembly would witness a significant increase in necessary legislative action to keep the program running, including but not limited to rate setting, diagnosis and procedure code changes, waiver programs that are not specified in federal policy, requirements to provide services deemed necessary but not expressly stated in federal or state law, and other examples where the State is provided broad authority to implement the program.

Another example may include federal funding programs that do not require a local match but the State agency has included a local match requirement in an effort to distribute funds more widely. Without express permission from the General Assembly, such action would not be allowed. There may also be instances when the State may experience a decrease in revenue due to a reduction or elimination of fees or penalties associated with rules that are no longer enforceable.

In the instances noted above, the costs to the State and other entities may be reduced as optional programming may not be implemented; however, costs may also be incurred as decision-making timelines may be extended and funding opportunities may be lost during the Legislative interim. The amendment does not preclude the General Assembly from taking actions to provide permission to State entities to continue specified benefits or services that exceed federal requirements, or to enact a process to manage instances when federal time limitations may not permit a department to receive permission from the General Assembly during the Legislative interim to implement a rule or policy. If enacted, the General Assembly may wish to receive a list and description of any anticipated permissive actions needed during the Legislative interim and ensure that necessary precautions are in place to avoid potentially costly delays or missed funding opportunities.

Vague or Broad Federal Authority

Interpretation when federal law provides only vague or broad authority may result in a greater number of appeals or court action. In such instances, it is conceivable that private or other governmental entities may believe that a State agency is exceeding its authority or, conversely, entities may believe a State agency can regulate, fund, or monitor a program or service beyond actions specified in agency rules or policy. While difficult to estimate, appeals and legal challenges have the potential to be costly to the State.

Agency Review and Compliance

Agencies will need to dedicate staff time to the review of existing rules to ensure compliance with this amendment and to implement any processes determined by the ARRC. Staff time may be significant for agencies that implement a large volume of rules, such as the Department of Human Services (DHS), and will include program administrators, managers, and administrative rules authors and reviewers. It is difficult to estimate the staff hours that may need to temporarily shift from other duties or contract/hire for this purpose. There is a potential for long-term savings resulting from decreased staff time necessary to write, review, and implement rules that are no longer permitted under this amendment. One-time software programming costs for financial accounting changes are expected.

Local Governments

While difficult to estimate, there may be instances when local governments experience cost savings as a result of this amendment, such as in the area of environmental or historic preservation rules and policies.

Summary of Fiscal Impact

Iowa Code changes concerning additional public input in the administrative rulemaking process, changes to administrative rules preambles, agency administrative rules internet sites, narrow construction of administrative rules, clarifications to licensure actions by the Racing and Gaming Commission, and the EPA and DNR regulations study are expected to have no or minimal fiscal impact.

The administrative rules restrictions related to the implementation of federal rules, regulations, and policies will impact all State agencies, but the fiscal impact to the State General Fund cannot be determined. Agencies that experience a large volume of rule writing and changes on a regular basis, such as DHS, will be impacted the most. All agencies will need to devote staff resources to ensure existing rules are in compliance with this amendment. The General Assembly is likely to experience an increase in legislative action necessary to expressly authorize implementation of broad or vague federal authority, and to make decisions on optional programming. Delays in decision making may have a significant impact on program funding. Interpretations of broad or vague federal authorization may result in an increase in potentially costly appeals and litigation. There may be cost savings to State and local governments depending on how the amendment ultimately impacts rules promulgated by the departments. The potential savings are indeterminate.

Sources

Department of Education
Department of Human Services
Iowa League of Cities
Iowa Utilities Board – Department of Commerce
LSA Analysis

March 13, 2012

The fiscal note for this bill was prepared pursuant to **Joint Rule 17** and the correctional and minority impact statements were prepared pursuant to Iowa Code **section [2.56](#)**. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.
